

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
. Detroit, Michigan  
. July 14, 2014  
Debtor. . 10:07 a.m.  
. . . . .

HEARING RE. (#5326) MOTION FOR COSTS RELATING TO CLAWBACK  
OF DEBTOR'S DOCUMENT PRODUCTION FILED BY CREDITOR  
ASSURED GUARANTY MUNICIPAL CORP.; (#5259) STATUS HEARING  
REGARDING PLAN CONFIRMATION PROCESS (RE. FIFTH AMENDED  
ORDER ESTABLISHING PROCEDURES, DEADLINES AND HEARING  
DATES RELATING TO THE DEBTOR'S PLAN OF ADJUSTMENT); STATUS  
HEARINGS REGARDING PLAN CONFIRMATION PROCESS TO BE HELD  
ON 6/26/2014 AND 10:00 A.M. AND 7/14/2014 AT 10:00 A.M.;  
(#2984) HEARING TO DETERMINE CLAIMING PARTIES' RIGHT TO  
VOTE REGARDING PLAN  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day  
By: HEATHER LENNOX  
222 East 41st Street  
New York, NY 10017  
(212) 326-3837  
  
Jones Day  
By: GEOFFREY IRWIN  
GREGORY SHUMAKER  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001-2113  
(202) 879-3768  
  
For Assured Chadbourne & Parke, LLP  
Guaranty Municipal By: ROBERT SCHWINGER  
Corp.: 30 Rockefeller Plaza  
New York, NY 10112  
(212) 408-5364  
  
For the Detroit Erman, Teicher, Zucker &  
Fire Fighters Freedman, P.C.  
Association and By: BARBARA A. PATEK  
the Detroit Police 400 Galleria Officentre, Suite 444  
Officers Associa- Southfield, MI 48034  
tion: (248) 827-4100

## APPEARANCES (continued):

For Syncora Holdings, Ltd.,  
Syncora Guarantee Inc., and Syncora Capital Assurance, Inc.:  
Kirkland & Ellis, LLP  
By: STEPHEN C. HACKNEY  
300 North LaSalle  
Chicago, IL 60654  
(312) 862-2157

For U.S. Bank:  
Waller Lansden Dortch & Davis, LLP  
By: PAUL DAVIDSON  
Nashville City Center  
511 Union Street, Suite 2700  
Nashville, TN 37219  
(615) 850-8942

For National Public Finance Guarantee Corporation:  
Jaffe, Raitt, Heuer & Weiss, PC  
By: PAUL R. HAGE  
27777 Franklin Road, Suite 2500  
Southfield, MI 48034-8214  
(248) 351-3000

Court Recorder:  
Kristel Trionfi  
United States Bankruptcy Court  
211 West Fort Street, 21st Floor  
Detroit, MI 48226-3211  
(313) 234-0068

Transcribed By:  
Lois Garrett  
1290 West Barnes Road  
Leslie, MI 49251  
(517) 676-5092

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 THE CLERK: Case Number 13-53846, City of Detroit,  
2 Michigan.

3 MR. SCHWINGER: Good morning, your Honor. Robert  
4 Schwinger from Chadbourne & Parke for the movant, Assured  
5 Guaranty Municipal Corporation. As your Honor knows, back in  
6 May we had a motion that was made by Assured to claw back the  
7 city's document production because it contained numerous  
8 documents, the disclosure of which was prohibited by the  
9 Court's mediation order. The Court granted that motion and  
10 said at the time that the parties who had incurred costs in  
11 connection with that motion and the costs of complying with  
12 the clawback could make a motion for their costs to the  
13 Court, and that's the motion we're here for today.

14 Under Rule 37, costs for violation of a discovery  
15 order of the Court are essentially mandatory unless the party  
16 that violated the order can show that its position was  
17 substantially justified, and we don't think that the city can  
18 show that here. The city's response to our motion was to  
19 present a lot of detail about the mechanics of their document  
20 production process, but the one thing that the city  
21 apparently never did -- and they don't represent that they  
22 did it -- is that they never simply ran a word search against  
23 their document production for phrases like "mediation order"  
24 and "mediation privilege" because that's how we found many of  
25 the documents in question. Given that, I don't think the

1 city is in much of a position to argue that the procedures it  
2 followed here were reasonable in terms of insuring compliance  
3 with this Court's order on the mediation protections.

4 In addition, the way the motion -- the original  
5 clawback motion came about essentially shows that the city  
6 took an unfortunate situation and essentially made it worse  
7 and, thus, created costs that didn't need to be -- to happen.  
8 What had happened here -- and it was set forth in the  
9 original motion -- is that one party initially in this case  
10 notes that there was a mediation document in the city's  
11 production like the day after the production was made. We  
12 all had just gotten -- we had all just gotten the disk  
13 drives. They had started to load it, and they spotted the  
14 document. They raised the issue with the city, and the city  
15 said -- responded and said, "Okay. We'll claw back that  
16 document or documents." Assured then responded immediately  
17 to the city and said, "Look don't do that. You know, the  
18 production just went out yesterday. Just get back the disk  
19 drives, clean everything up, and then redo the production."  
20 And also that will help minimize the ability of people to  
21 zero in on the very documents that shouldn't have been in the  
22 production in the first place because that's what happens  
23 when you specifically identify documents by number and ask  
24 people to pluck them out one by one. The city unilaterally  
25 and without any further discussion with Assured didn't do

1 that. They issued a clawback notice for a small number of  
2 documents, and as a result of that, Assured then immediately  
3 raced into court with the clawback motion, and that motion  
4 was granted. It was then revealed that there were, in fact,  
5 hundreds of documents, not just the few that were in the  
6 city's clawback notice, that needed to be clawed back. Those  
7 documents never would have been revealed or at least not in a  
8 timely manner had Assured not made its motion and focused the  
9 city's and the Court's attention on this issue, and, in fact,  
10 if the city had just called back the disk drives at the time  
11 when Assured asked them to do so and went through its  
12 production and cleaned it up, there would have been no costs  
13 whatsoever for all practical purposes. People would have  
14 said, "All right. Fine. Here's your disk drive back." It  
15 would have been the cost of a FedEx back to Jones Day. So  
16 the situation here and the costs that were incurred were  
17 entirely unnecessary, and it was because the city, rather  
18 than taking the Court's mediation order with the seriousness  
19 that it warranted, instead decided to just try to give it the  
20 back of its hand and not have to deal with the issue, and  
21 that's why we ended up spending time on it and making a  
22 motion and having to deal with the clawback of the production  
23 and then ultimately why we're here this morning, so for these  
24 reasons, we believe that the imposition of costs under Rule  
25 37 is appropriate here.

1           THE COURT: I was concerned that your request for  
2 costs is as high as it is. \$45,000 seems like a very big  
3 number for this problem. You want to address that?

4           MR. SCHWINGER: Sure. And the point is very simple,  
5 your Honor, is we put into the motion papers the time and  
6 expenses that actually were recorded. If the Court -- I mean  
7 laid out all the details precisely so the Court could make  
8 those kind of judgments. If the Court feels that the number  
9 is excessive and wants to scale it back in terms of what's  
10 being done under Rule 37 here, you know, that's the Court's  
11 judgment, and we accept it. That's why we gave the Court all  
12 the information. But these are the charges that were  
13 actually recorded in terms of dealing with this process. We  
14 don't think that they were unreasonable, but if the Court  
15 differs, that's precisely why we gave the information, and we  
16 are fine with the Court making that judgment.

17           THE COURT: Thank you, sir.

18           MR. SCHWINGER: Thank you.

19           MR. IRWIN: Good morning, your Honor. Geoff Irwin,  
20 Jones Day, on behalf of the city. Your Honor, the -- and  
21 with the Court's indulgence, I have a little bit of a cold  
22 this morning, so I --

23           THE COURT: Okay.

24           MR. IRWIN: -- hope it doesn't catch up with me, and  
25 I'll try to be brief because we did lay out a lot of what we

1 want to say in the papers. I think the core points that we  
2 have tried to make and one which I don't know how much  
3 disagreement there is on this point is that there is no  
4 accusation, there's no allegation, there's no charges that  
5 this was intentional or anything close to intentional. There  
6 is precedent that we've cited, and many courts who consider  
7 these issues do look at whether there was, in fact, bad faith  
8 or intentional conduct. There was a mistake that's been made  
9 here. No one's document production in this case has been  
10 more transparent than the city's. No one's document  
11 production has been subject to more scrutiny than the city's.  
12 We have laid out in great detail in several affidavits that  
13 the Court may recall that the original Hale affidavit that we  
14 were required to provide after the first hearing on these  
15 points, if you print out, is this thick. It is a like a  
16 little phone book. It contains all of the details of the  
17 city's collection and production. It contains the index that  
18 we were required to produce. It contains all the  
19 instructions and materials that were provided to the contract  
20 lawyers in the case, and we have explained in that affidavit  
21 and particularly in the recent affidavit that we submitted in  
22 connection with our response to this motion exactly what  
23 happened here. And we live in an age of electronic discovery  
24 and e-mails where there is a massive amount of information  
25 for lawyers to have to review. There is technology and

1 software that allows lawyers to attempt to catch up with that  
2 and review those on an expedited basis, but the fact of the  
3 matter is that simple processing mistakes like what happened  
4 here in the handoff of files from a vendor to Jones Day can,  
5 in fact, impact the review of documents, and a mistake was  
6 made, and there were documents that were released.

7 THE COURT: Well, it wasn't Ambac's mistake.

8 MR. IRWIN: It was not.

9 THE COURT: So why should Ambac bear any of the  
10 burden of it?

11 MR. IRWIN: You mean Assured, your Honor?

12 THE COURT: Sorry. I do mean Assured.

13 MR. IRWIN: The burden is simply associated with the  
14 costs of bringing the motion at this point. They have not  
15 claimed any prejudice. The cases that discuss these matters  
16 talk about litigation or legal prejudice that flows from  
17 mistakes like this where a court order is violated. There  
18 have been no allegations of that sort in this matter. We are  
19 simply talking about the costs that they claim with bringing  
20 the motion. And to that end, Mr. Schwinger talks about the  
21 events that transpired on Thursday, the 8th, and Friday, the  
22 9th. These were the days right before the Monday hearing.  
23 The city did not know the magnitude of the problem on  
24 Thursday, the 8th, so it is easy in hindsight to say that the  
25 city should have done "X" or "Y" knowing what we know now as



1 it is easy to say that the city could have run a search on  
2 its production for terms like "mediation" to locate some of  
3 these documents. Again, it's easy to say that with the  
4 benefit of hindsight, but the real analysis should be what it  
5 is that the city knew about its document production at the  
6 time. Was the city aware that it had a problem?

7 THE COURT: There was a violation of a court order.

8 MR. IRWIN: There was.

9 THE COURT: Does the rule require any more than  
10 that?

11 MR. IRWIN: The rule requires an analysis of whether  
12 the violation, in order to -- the way the rule reads, a  
13 sanction is permissible except when there is a showing of  
14 substantial justification or where the circumstances  
15 otherwise make an award of sanctions unjust. That's in Rule  
16 37.

17 THE COURT: Where's the injustice given that Assured  
18 bore none of the fault for the circumstances that led to its  
19 incurring of legal expenses?

20 MR. IRWIN: I would say that there is injustice  
21 associated with requiring the city to pay \$45,000 associated  
22 with a motion for costs in connection with a motion that was  
23 filed before the city was given an opportunity to address  
24 the -- assess the situation, address the problem, make a  
25 proper decision about what to do about it, where the

1 procedures, as don't seem to be contested other than this  
2 back-end search across the production for a few terms -- the  
3 procedures were otherwise designed and there was layers of  
4 redundancies to catch things like this, and this has been  
5 laid out in detail. There seems to be no challenge to that  
6 where the process was reasonable, designed to catch these  
7 matters, and but for a --

8 THE COURT: But it failed.

9 MR. IRWIN: But failed but for a completely  
10 inadvertent and honest mistake.

11 THE COURT: It failed.

12 MR. IRWIN: Correct, your Honor. It was not  
13 intentional. It failed in ways that in this age of massive  
14 electronic discovery happen. This happens in large-scale  
15 document productions.

16 THE COURT: I don't know that, but I'll accept your  
17 representation that that's so. Still, why should Assured pay  
18 for it?

19 MR. IRWIN: The only thing that Assured is being  
20 asked to pay for -- and I would like to draw this  
21 distinction, your Honor, because this came up at the first  
22 hearing. Your Honor put this question to -- the same  
23 question to me at the hearing, and Assured has cited the same  
24 question in its papers. I believe -- and the Court will tell  
25 me if I misunderstand this, but we had this colloquy at the

1 last hearing where the Court asked me the question. I  
2 believe the context at the time and my -- certainly my  
3 interpretation of it was what happens if the parties, upon  
4 receipt of the re-production that was ordered at the time,  
5 are unable to use the work that has gone into coding? When  
6 you receive an electronic production, there's a lot of coding  
7 and databases that are built to allow attorneys to review  
8 something once and get the benefit of that and be able to  
9 search for documents easily and locate key documents and  
10 things like that, and the issue that came up at the hearing  
11 was, well, what's going to happen to that? What happens when  
12 you make this re-production to everyone on Friday and all of  
13 the work that I put into coding this database is gone, and  
14 that is a cost to me? And I thought that the Court was  
15 sensitive to that. The Court put the question to us very  
16 directly, and it is the very reason why both the city and a  
17 number of parties caucused during a break. We arrived at a  
18 solution, and the city agreed and, in fact, delivered on its  
19 commitment to make that re-production in a form that allowed  
20 everyone to have saved the work they did and slide it right  
21 into the new document production. That's why there are the  
22 number of pages that are cited that say, you know, pages  
23 intentionally left blank and things like that. And I think  
24 that's a fair question to the city. If that had, in fact,  
25 happened -- and I took that to be the spirit of at least in

1 part the Court's question to me -- what happens? Why should  
2 the objectors pay in that form for a mistake that's made by  
3 the city? And that was the intent of trying to do just that.  
4 That is not what Assured is complaining about here. They are  
5 not saying that we are prejudiced, that we had to expend  
6 additional costs because of this mistake that we would not  
7 have had to incur but for the fact that this re-production  
8 had to be made. They're simply saying we want the costs of  
9 our motion, and the motion itself was borne from a very  
10 simple exchange on the Thursday that led to a unilateral  
11 decision by Assured to file its motion on Friday, which,  
12 again, was a seven-page motion with no legal authority that  
13 required nine, ten lawyers to work on, 20 hours of drafting  
14 or editing, and it results in a \$45,000 bill to the city. We  
15 don't think that's fair under the circumstances. We think  
16 that the procedures that were in place were reasonable. We  
17 think that mistakes like this absolutely happen in large-  
18 scale electronic document productions of this type, of this  
19 nature, under the circumstances that we've described, and set  
20 against the reasonable precautions that the city had in place  
21 to protect against this, it simply happened.

22 I mean one thing the city could have done, your  
23 Honor, because this is very difficult to do -- people act  
24 like we should have just pressed a button and a computer  
25 would have spit out all of the documents that were protected

1 by mediation and that we should have run a search at the end  
2 of the productions for a root of mediation, and that would  
3 have, you know, solved this problem for us. It doesn't.  
4 There are numerous parties involved in these mediations all  
5 the time, and they've played out over a very long period of  
6 time.

7 THE COURT: But the order prohibiting the disclosure  
8 of mediation documents was absolute.

9 MR. IRWIN: No doubt.

10 THE COURT: It wasn't don't produce them unless it's  
11 too hard not to produce them.

12 MR. IRWIN: I understand that, your Honor. That  
13 doesn't change the fact that it is very, very difficult to do  
14 an execution, and the city did its very best to protect  
15 against just that. And the fact that mediation --

16 THE COURT: Okay. So why was the response to  
17 Assured after the problem was brought to light, "Tell us  
18 which documents you want clawed back, and we will claw back  
19 those documents"?

20 MR. IRWIN: Your Honor, that was the purpose of the  
21 clawback letter that we issued on Thursday. We took all of  
22 the documents, and at that time -- I don't have an exact  
23 count. I don't believe there were more than a dozen or so,  
24 which, again, speaks to what the city appreciated at the time  
25 about the magnitude of the problem. We thought that could be

1 handled by a simple clawback letter. We use every one of the  
2 documents that had been brought to our attention. It  
3 occurred in one day, and so we didn't just rely on that.

4 THE COURT: But it wasn't Assured's responsibility  
5 to go through the production and identify to you which of the  
6 documents violated the court order. That was not their  
7 responsibility.

8 MR. IRWIN: I understand that, your Honor, but it  
9 does relate to the costs that were incurred in connection  
10 with filing a motion and the -- whose fault is this and what  
11 could or should the city have done differently. I do think  
12 we have to take into account what it is that the city knew  
13 about the problem at the time it was presented, and the city  
14 could have and we believe should have been given an  
15 opportunity to do something about it so that a motion like  
16 this would not have been needed to be filed.

17 THE COURT: Why wasn't the first response as  
18 suggested by Assured, "Okay. This is so serious we need to  
19 get back all the hard drives first thing"?

20 MR. IRWIN: We did not understand -- we didn't even  
21 know what all of the documents contained. We simply wanted  
22 time to collect the documents, assess the documents, and make  
23 a determination as to what to do about it.

24 THE COURT: But the longer the documents --  
25 protected documents are out there, the more mischief is

1 potentially caused.

2 MR. IRWIN: Correct, your Honor, but if it was a  
3 small number of documents -- and based on the nature of the  
4 documents, there may not have been the prejudice that Assured  
5 or someone else would have claimed. There could be documents  
6 that are strictly the city's documents.

7 THE COURT: Right, but why take that chance? Why  
8 not just get the hard drives back?

9 MR. IRWIN: It seemed to the city at the time, given  
10 the number of documents that it understood were affected,  
11 that a clawback letter was the most appropriate thing to do  
12 in the schedule, and it is, in fact, what other parties have  
13 done in this case when they have produced mediation  
14 documents. Where mediation documents have been produced by  
15 other parties since all of this happened, they have proceeded  
16 by way of clawback because there were a small number of  
17 documents involved, and we are lawyers. We are officers of  
18 the court. We will certify that we will destroy clawback  
19 documents once they're indicated to us, and that request has  
20 been made. And we think other parties have reacted that way  
21 for that reason, and the city was simply in the same  
22 position. It happened very quickly. It happened over the  
23 course of, you know, a single day or 36 hours into Friday  
24 when the motion was filed. The city was being made aware of  
25 this for the first time. We were scrambling to find out

1 exactly what the problem was and how severe it was. We felt  
2 it was appropriate to issue a clawback letter. We did that,  
3 and then the next thing we knew, the next day the motion to  
4 compel was filed.

5 THE COURT: All right. Thank you, sir.

6 MR. SCHWINGER: Just a few words in response, your  
7 Honor. The city focuses, I think, tremendously on trying to  
8 establish their good faith and good intentions and so on, and  
9 I think in their papers they are trying to rely on case law  
10 that deals with the imposition of sanctions under the Court's  
11 inherent authority rather than the more specific rule dealing  
12 with the imposition of sanctions under Federal Rule of Civil  
13 Procedure 37 and its bankruptcy counterpart, which deals with  
14 sanctions in the context of violation of an actual existing  
15 court order. So I think the city's focus on its own conduct  
16 here is misplaced in terms of what the applicable test is,  
17 which is here is that sanctions are essentially presumed  
18 under Rule 37 to be automatic unless the city's conduct can  
19 be shown to be substantially justified.

20 Despite everything which Mr. Irwin just related,  
21 several points come out. Number one was at the time this  
22 problem was first emerged, the city did not know the source  
23 of the problem, and so they had no ability to make any  
24 judgments whatsoever about its dimension. Nevertheless, they  
25 made assumptions about its dimension, and those assumptions



1 proved to be wildly incorrect. And as a result, we were  
2 forced to make the motion and incur the costs.

3 By the way, a comment on the -- Mr. Irwin's comment  
4 about the costs that were run up in making the motion. The  
5 costs, as set forth in the papers, are not simply about  
6 drafting motion papers. It was a number of attorneys  
7 spending hours on that Thursday trying to figure out what was  
8 going on in the production, what was there, searching for  
9 documents and so on to see exactly what was going on in the  
10 production. It wasn't just one document. There were  
11 multiple documents. And at the end of the day, despite the  
12 reasonableness that Mr. Irwin claims for the city's actions,  
13 they never really fully explained what caused this problem to  
14 occur, but at the end, the fact of the matter is that the  
15 simplest thing they could have done, which was the first  
16 thing that we did, which is search for the word like  
17 "mediation order" or "mediation privilege," would have  
18 spotted it in a second, and that was not done. And in this  
19 situation, especially when the problem was brought to their  
20 attention, had the city done that, they would have already  
21 seen the problem as much larger than they thought it had  
22 been, so by that standard alone, I think the city's conduct  
23 was unreasonable here.

24 We are not seeking costs for recoding the  
25 production. That was done appropriately. We thank the city

1 for doing that once the clawback was done. They did it in a  
2 way that people could preserve whatever work had been done up  
3 to that point, but the fact is that there were costs  
4 incurred, and Assured in this situation was blameless, and we  
5 should get some compensation for having done this.

6           You know, the sanction here, you know, is -- we  
7 should put it in perspective here. It is just dollars. No  
8 one is being sent to jail. Well, I shouldn't presume, but  
9 I'm predicting that no one is going to be sent to jail over  
10 this, but I think it is not unimportant that the Court send a  
11 message that its orders need to be taken seriously,  
12 especially something as serious and important to this  
13 bankruptcy process as the mediation order in this case, and I  
14 think it would send a very bad signal if the city were let  
15 off here with no sanction whatsoever. Thank you.

16           THE COURT: All right. Thank you. I'm going to  
17 take this matter under advisement for ten minutes, and then  
18 I'll give you my decision. We'll reconvene at 10:40, please.

19           THE CLERK: All rise. Court is in recess.

20           (Recess at 10:30 a.m., until 10:40 a.m.)

21           THE CLERK: All rise. Court is in session. Please  
22 be seated. Recalling Case Number 13-53846, City of Detroit,  
23 Michigan.

24           THE COURT: Counsel are present. The motion before  
25 the Court is under Rule 37(b)(2)(C) of the Federal Rules of

1 Civil Procedure. That rule states, "Instead of or in  
2 addition to the orders above, the court must order the  
3 disobedient party, the attorney advising that party, or both  
4 to pay the reasonable expenses, including attorney fees,  
5 caused by the failure, unless the failure was substantially  
6 justified or other circumstances make an award of expenses  
7 unjust." The record clearly establishes -- indeed, it is not  
8 contested -- that the Court's mediation order and  
9 specifically the confidentiality provisions of it were  
10 violated by the city and its counsel. In the circumstances,  
11 therefore, the Court is required to grant the motion unless  
12 the failure to abide by the court order was substantially  
13 justified or other circumstances make an award of expenses  
14 unjust. The Court certainly cannot find that the failure to  
15 comply with its order was substantially justified. There was  
16 no legal justification for failing to comply with the order.  
17 The question then becomes whether other circumstances make  
18 the award of expenses unjust. The city and its counsel argue  
19 that it took all of the necessary and appropriate and  
20 reasonable precautions to avoid violating the mediation  
21 confidentiality order. The difficulty with that argument is  
22 that the city and its counsel then made a second mistake, and  
23 that is to assume that the scope of the problem was such that  
24 a clawback letter would reasonably take care of it as opposed  
25 to simply clawing back the entire hard drive with all of the

1 documents on it. That was, indeed, a second mistake.  
2 Therefore, the Court cannot find here that there are  
3 circumstances that make an award of expenses unjust. Assured  
4 and its counsel should, in all equity, not be required to  
5 bear any of the expenses of the city's two mistakes.

6 The question then becomes what costs should be  
7 awarded. The Court was actually quite outraged at the  
8 request of \$45,000 to bring this matter to the Court's  
9 attention by way of the motion and its argument and, in all  
10 honesty, very nearly denied the motion because of how  
11 outrageous the request was, in the Court's view.  
12 Nevertheless, the Court concludes that it is appropriate to  
13 grant the motion, and the Court will award fees against  
14 counsel and the city in the amount of \$10,000. The Court  
15 will prepare an order.

16 (Recess at 10:44 a.m., until 11:03 a.m.)

17 THE CLERK: Recalling Case Number 13-53846, City of  
18 Detroit, Michigan.

19 MR. SHUMAKER: Good morning, your Honor. Greg  
20 Shumaker of Jones Day for the city. I thought what might be  
21 helpful to the Court would be a brief progress report and  
22 then raise a couple of issues with your Honor which I think  
23 are fairly straightforward and really not all that  
24 controversial. Since we last were together, the parties for  
25 the most part, I think, have been cooperating on the

1 discovery process and figuring out how to get all these  
2 depositions done, and the depositions are proceeding apace.  
3 Just so your Honor knows, there were seven Band 1 witnesses.  
4 Two of those witnesses' depositions have been complete.  
5 Three will go forward this week, Mr. Malhotra, Mr. Hill, and  
6 Mr. Buckfire, and there will be two next week, Mr. Orr and  
7 Mr. Moore.

8           As for the Band 2 witnesses, it can be a little bit  
9 difficult to quantify how many Band 2 fact witnesses there  
10 are. I think there were about 51 in the deposition protocol  
11 order that your Honor entered. The number is being narrowed,  
12 and there have been a few additions, I would say, but for the  
13 most part we're narrowing. In fact, last night the parties  
14 entered into a stipulation that -- with the city and FGIC and  
15 Syncora and National -- I believe National was a part of it,  
16 but they may not have been. In any event, that ended up  
17 eliminating six witnesses from the roster, so progress is  
18 being made in that regard. About half of the DWSD-related  
19 witnesses have been deposed, and the other 40 to 50 are in  
20 various stages of scheduling, so we're moving forward.  
21 Obviously August 4th is coming very quickly, but with regard  
22 to the fact witnesses, we're moving along.

23           July 8th your Honor knows that the city identified  
24 its expert witnesses. Seven of those 12 have been scheduled.  
25 The other five I'm sure will be soon. And the city, of

1 course, awaits for the objectors' identification of their  
2 witnesses and providing their expert reports on July 25th,  
3 and we will commence those depositions shortly thereafter, so  
4 that's kind of where things are, your Honor, on the discovery  
5 front. If you have any questions about that, I'd be happy to  
6 answer them.

7 THE COURT: Thank you.

8 MR. SHUMAKER: Then my other two minor issues, one,  
9 as your Honor knows, the expert -- the city's experts  
10 delivered their expert reports to the objectors last week.  
11 Your Honor's order -- scheduling order indicated that those  
12 reports should be served. It did not indicate anything about  
13 filing. With your Honor's permission, the city would propose  
14 to publish those expert reports, put it on the emergency  
15 manager's website so that everyone could see them, but we  
16 didn't want to do that without your permission.

17 THE COURT: Well, that's up to you. I do not want  
18 any expert's reports filed.

19 MR. SHUMAKER: Understood, your Honor.

20 THE COURT: Served, yes; filed, no.

21 MR. SHUMAKER: Understood. Okay. We'll proceed  
22 accordingly then. And the last is somewhat of a trial issue,  
23 but I wanted to flag it as early as possible, your Honor.  
24 One of the city's witnesses is Robert Cline. He is at Ernst  
25 & Young. He knows a lot about the forecasting of tax

1 revenues, and that's what his testimony will be on. He is  
2 retiring from Ernst & Young at the end of this month or  
3 around there, and he's going to work for the OECD in Paris.  
4 He is being deposed this week, but we've had to work things  
5 out with the United States government about when Mr. Cline  
6 could come back from Paris to testify. As your Honor knows,  
7 the trial starts on August 14th. The city would like to slot  
8 Mr. Cline in for Monday, August 18th, and perhaps Tuesday,  
9 August 19th, to allow him to testify and to get back over to  
10 Paris, and, with your Honor's permission, we would plan on  
11 doing that.

12 THE COURT: Have you discussed that with opposing  
13 counsel?

14 MR. SHUMAKER: We have not, your Honor. I have not.  
15 I've spoken with Mr. Hackney, but we had not raised it with  
16 them.

17 THE COURT: All right. I don't see any issue with  
18 it. If any of the opposing counsel do have an issue with it,  
19 you can get me on the phone, and we can see about working it  
20 out.

21 MR. SHUMAKER: Certainly, your Honor. And unless  
22 you have questions, your Honor, that was what I had today.

23 THE COURT: All right. Thank you.

24 MR. SHUMAKER: Thank you.

25 THE COURT: Would anyone else like to bring up

1 anything? Mr. Hackney.

2 MR. HACKNEY: Your Honor, good morning. Stephen  
3 Hackney on behalf of Syncora. Briefly responding to Mr.  
4 Shumaker, what I told him in the hall was -- I said, "It's  
5 your case in chief, so I think you get to call your witnesses  
6 when you want them." There's a little hidden issue in there,  
7 though, your Honor, which is the notion of whether witnesses  
8 can be examined adversely in the city's case or whether  
9 you're limited on cross to what they raised in the scope of  
10 their direct, and you may have to decide with respect to that  
11 one witness.

12 THE COURT: The answer is no.

13 MR. HACKNEY: Yeah, so -- oh --

14 THE COURT: The answer is, no, the scope of cross is  
15 not limited to the scope of direct.

16 MR. HACKNEY: That's where I thought you would come  
17 out, but that also makes sense to me. I'll also be brief,  
18 your Honor. I had three issues. I wanted to give you some  
19 sense of progress. We've taken five depositions on the COPs  
20 side to date, the city assessor, its HR director, city's  
21 senior urban planner, a Retirement System administrator, and  
22 a Milliman employee named Glenn Bowen. This is a big week  
23 for depositions. In the next two weeks -- or I should say  
24 the next two weeks, almost a dozen COPs-related depositions  
25 will be taken, so we are out there chopping wood.



1           We have been -- there have been additional  
2 productions of documents since the June 20, you know,  
3 substantially complete date, and we're grappling with some of  
4 those follow-on production issues, but I do think, your  
5 Honor, we're starting to get closer to a more fundamental  
6 issue with respect to plan construction that I wanted to at  
7 least raise for you for you to consider, so let me tell you  
8 some of the things that we don't have as we stand here today  
9 about a month from trial.

10           The LTGO recently settled, and we have neither a  
11 definitive settlement agreement for them nor do we really  
12 even have the term sheet of their agreement, and I'll tell  
13 you a little bit about what we've got on them so you can kind  
14 of assess it a moment. We do not have many of the collective  
15 bargaining agreements that the city has recently entered  
16 into. We do not have the definitive documents for the DIA  
17 and OPEB settlements. We do not have the definitive  
18 documents for the UTGO settlement. On those last two  
19 categories, your Honor, what you have are fairly -- you know,  
20 you have a good sense of the guts of the deal in a  
21 description of principal terms, but you do not have the  
22 definitive documents, and I'll offer for a second kind of a  
23 conversation about the extent to which, you know, the  
24 continuum matters, but I wanted to be very precise about what  
25 I'm saying.

1 Documents that we have gotten only recently include  
2 some of the collective bargaining agreements that were  
3 approved and that have been ratified by the State of  
4 Michigan, and then, for example, something as important as  
5 the forecast was only recently updated. That is a big model,  
6 and I don't think, as I stand here today, that I have a  
7 working version of the electronic model of the forecast, and  
8 I cannot tell you how material the changes were, but  
9 certainly with experts and people that are in progress, when  
10 you change these forecasts, you know, a bunch of things start  
11 happening in terms of all the analysis that's been done to  
12 date.

13 So what I mainly wanted to say was, you know, I've  
14 been following carefully -- when you had the disclosure  
15 statement hearing, I think you were kind of pointing out to  
16 counsel the conundrum of, you know, I don't want the plan to  
17 have to be set in stone before we start to litigate it  
18 because I want the process to allow for continued settlement  
19 and discussion, and you've been borne out because there have  
20 been additional settlements along the way. I think on the  
21 other side of it, though, there may come a point where you  
22 have to actually say this is the plan and stick a fork in it,  
23 and then, second, I think you have --

24 THE COURT: I share your concern about that, and it  
25 was one of my questions that I was going to get to for the

1 city.

2 MR. HACKNEY: Okay. I wanted to pair that for your  
3 consideration with, I think, some consideration of what is  
4 enough to try the plan, okay, so -- and I actually don't know  
5 all the different possible answers to questions that you  
6 could ask, but for -- I can see circumstances where if I have  
7 the term sheet, I don't need the definitive documents to  
8 litigate the plan. There are other circumstances, though,  
9 where the specifics of the definitive documents may matter to  
10 things like the legality of the plan or the economic -- I  
11 mean it's hard to know, so what I think -- what I was  
12 thinking about on this -- and certainly like on LTGO, okay,  
13 as a COPs holder, you look up at the LTGO number, which you  
14 can infer from some of the expert reports is 34 cents on the  
15 dollar on the unsecured portion of their claim. Certainly  
16 you'd like to know to make sure there are no other terms, and  
17 I tried to confirm this with LTGO, and their counsel said  
18 that wasn't exactly their understanding, so I don't know what  
19 it is. I'm telling you what I've tried to piece together,  
20 but just to tie it up to the substance, you can see how it  
21 matters to me because you're looking up and saying, wow,  
22 they're getting a 350-percent recovery over a COP holder, and  
23 they are one of the nearest things to a COP holder I would  
24 say in this plan in terms of the characteristics of their  
25 bonds. And I know that they would shout me down for saying

1 that, but you get the sense of the -- you get the sense of  
2 the substance of it.

3           On the collective bargaining agreements, if you look  
4 even at Mr. Moore's report, he talks about the onerous work  
5 rules that have been imposed upon the city -- not his report  
6 but in his other work product -- that have limited its  
7 efficiency and have had an impact on it, and I think the  
8 financial review team also talked about this, so we have been  
9 eager to get these collective bargaining agreements and lay  
10 them side by side with the other ones from before and see  
11 like how did you do in terms of bumping rights or seniority,  
12 have you freed up the city to be able to operate in a way  
13 that it needs, so the later those come in the process, the  
14 harder it gets.

15           So that was the main point that I wanted to make to  
16 you. I did have a -- I think I had somewhat in the way of a  
17 suggestion, which is I think we need a date certain at which  
18 they decide when they're -- at least with respect to a  
19 particular settlement, when they're going to document it or  
20 whether -- when they're just going to go with what they've  
21 got in the description in the plan, and then that leaves it  
22 to me to say then maybe my objection is, well, that's not  
23 good enough for purposes of this plan confirmation, so the  
24 city has made a mistake there or whatever.

25           There is a last point I wanted to raise, and then

1 I'll sit down. You will remember that last year in August  
2 you and I actually and Ms. Ball had an argument around the  
3 casino proceeds, the so-called cash trap, and that was in  
4 August of 2013. And you ruled that the -- you ruled against  
5 my client. You said that the casino proceeds were property  
6 of the estate. They were subject to the automatic stay. We  
7 appealed that ruling, and it was fully briefed before Judge  
8 Friedman, but then it got stayed before Judge Friedman  
9 because of the eligibility appeal that's ahead of it. After  
10 a period, we sought a mandamus petition from the Sixth  
11 Circuit saying that we thought that it was important that the  
12 appeals in front of Judge Friedman go forward. The Sixth  
13 Circuit issued -- granted the petition for a writ on July  
14 2nd, and I wanted to bring to your attention something that  
15 they said that may have implications for the schedule because  
16 what they said in their opinion was they said, "The question  
17 presented in Syncora's appeal - whether a substantial revenue  
18 stream is rightly considered property of the bankruptcy  
19 estate - is precisely the type of issue that should be  
20 reviewed before the bankruptcy court confirms the plan of  
21 adjustment. Without a final decision on that question, the  
22 city will not know what amount its coffers will contribute to  
23 the bankruptcy estate, the creditors cannot know the size of  
24 the pie they are being asked to share, and the bankruptcy  
25 court cannot be confident that it is considering a legally

1 and financially viable plan."

2           They ordered Judge Friedman to rule on July 14th,  
3 but on July 11th he actually beat their deadline, and he  
4 affirmed your ruling in a two-and-a-half-page opinion that he  
5 filed on Friday. I think it actually got filed in this case  
6 this morning. We filed a notice of appeal of his ruling on  
7 Friday and have not heard anything back from the Sixth  
8 Circuit, but the reason for this long soliloquy from me was  
9 mainly I didn't want to step up at a status conference and  
10 not tell you that we are evaluating the extent to which there  
11 is crosstalk between what's happening in the Sixth Circuit  
12 and what's happening here and that that is something we may  
13 return to on with a more informed view as we learn more about  
14 how the Sixth Circuit intends to proceed. And that was all I  
15 wanted to say on that, your Honor. It dovetails a little bit  
16 with the other issues of what are we doing here in terms of  
17 getting definitive documents or, you know, which term sheets  
18 and the like, so there are kind of a couple things moving  
19 around here that may have implications for the schedule.

20           THE COURT: Well, I have to say I thought it was  
21 interesting that neither Judge Friedman nor the Sixth Circuit  
22 dealt with what I thought was a fairly obvious jurisdictional  
23 issue there, which was whether that order finding that the  
24 casino revenues are property of the city is even a final  
25 appealable order.

1 MR. HACKNEY: You may be talking to someone else  
2 right now, but not me, your Honor, but if you're --

3 THE COURT: Well, no. I'm talking to everybody.

4 MR. HACKNEY: Okay. Well, I don't know if you  
5 wanted me to respond.

6 THE COURT: No, no.

7 MR. HACKNEY: Okay.

8 THE COURT: It's not my issue. You know, I'm done  
9 with it.

10 MR. HACKNEY: Your Honor, those --

11 THE COURT: At the same time, if I remember my order  
12 correctly, which there's a 50/50 chance of, I said that that  
13 finding was without prejudice to your right to move for  
14 relief from the stay, which you never did.

15 MR. HACKNEY: I don't remember your ruling well  
16 enough to answer that.

17 THE COURT: Whether I said it or not, as a matter of  
18 law, it's so.

19 MR. HACKNEY: That's true. We did not move for  
20 relief from the stay, your Honor.

21 THE COURT: Well, it's also so that you have that  
22 opportunity under Section 362.

23 MR. HACKNEY: I haven't looked at the --

24 THE COURT: Again, with this comment, I'm talking to  
25 everyone in the room.

1           MR. HACKNEY: Okay. All right. Some of this may be  
2 going over my head, your Honor, but I've made -- I guess I  
3 wanted to bring it to your attention because I do think it's  
4 a salient issue.

5           THE COURT: I appreciate that.

6           MR. HACKNEY: Yeah. I assume you'd seen it.

7           THE COURT: I saw the same language and wondered the  
8 very same question.

9           MR. HACKNEY: I thought it was highly likely that  
10 you had seen this development. I did not want to be in a  
11 position where --

12          THE COURT: Right.

13          MR. HACKNEY: -- this went forward and the Sixth  
14 Circuit later said to us, "You dummies never told the  
15 Bankruptcy Court about our ruling," so --

16          THE COURT: Okay. Fair enough.

17          MR. HACKNEY: Thank you.

18          THE COURT: Anyone else want to raise any issues?

19          MR. SCHWINGER: Good morning, your Honor. Robert  
20 Schwinger again. I just wanted to address one or two things  
21 with respect to the DWSD side of the case. I think Mr.  
22 Shumaker gave a very able summary of the status of  
23 depositions and moving along nicely, and I don't think we've  
24 been having any problems with getting scheduled what we need  
25 to have scheduled.



1           One issue came up on Friday, and I don't know if  
2 this is the forum in which to raise it, but your Honor has  
3 invited the parties to get informal resolutions when  
4 discovery issues crop up. We had an issue at a deposition  
5 about a document which we used at the deposition. The city  
6 lawyers looked at it and said, "We think this is privileged.  
7 We want to claw it back," so they clawed it back on the spot,  
8 but we advised the city that we did not agree with the  
9 assertion of privilege. I've asked the city attorneys, and  
10 they have, to bring a copy of the document with them for in  
11 camera review since the fundamental aspect of the issue is is  
12 that even if it was sent to an attorney or from an attorney,  
13 we don't think the subject matter is legal issues as opposed  
14 to business issues, so I put that in front of your Honor  
15 to -- for guidance as to how and when you'd like to address  
16 that here today.

17           THE COURT: I think if it's possible to deal with it  
18 today, we should.

19           MR. SCHWINGER: Okay.

20           THE COURT: So how would you suggest I proceed?

21           MR. SCHWINGER: Mr. Irwin has a copy of the  
22 document. I don't know if the Court wants to hear anything  
23 further from the parties before the Court reads the document.

24           THE COURT: What is the document?

25           MR. SCHWINGER: It's a three-page document, and it

1 has no -- it's not addressed to anyone or signed by anyone,  
2 but it reads as if it like -- as if it were a letter, but  
3 it's just text, and it's discussing certain issues that are  
4 of importance to DWSD. It seems to be largely focused on  
5 operational and financial issues such as things that might be  
6 done in order to improve bond ratings, and so it didn't seem  
7 to us that it was about any kind of legal issues even if it  
8 was sent by an attorney to an attorney, and there's no  
9 indication of that on the face of the document anyway.

10 THE COURT: Mr. Irwin, can you shed some light on  
11 this?

12 MR. IRWIN: I'm not sure I can, but I'll try. The  
13 document, your Honor, I think Mr. Schwinger described it. It  
14 is a -- it is a narrative that doesn't -- is not captioned in  
15 any way and doesn't on its face give all of the information  
16 associated with it, but we have investigated the document,  
17 your Honor. It is, in fact, a draft version of a legal  
18 memorandum that was prepared by DWSD's general counsel and  
19 two of DWSD's outside attorneys. It is addressed to Ms.  
20 Lennox directly, and it's dated February 11th, 2014, so what  
21 you have is a draft of the memorandum that was inadvertently  
22 produced as to a document over which the city has, in fact,  
23 claimed privileged as -- and there's a legend on the final  
24 document establishing just that. And the contents of the  
25 final version, which read very much like the draft, make it

1 pretty plain that this is the DWSD's general counsel and its  
2 outside lawyers' opportunity to comment on a draft version of  
3 the plan and make suggestions about the writing of the plan  
4 itself that we think plainly falls within the construct of  
5 attorney-client privilege, but I have the documents for the  
6 Court to review if it wishes.

7 THE COURT: I will in a moment. And for the record,  
8 who are the authors? Who are those lawyers that you are  
9 referring to?

10 MR. IRWIN: The lawyers are Mr. William Wolfson.  
11 He's the general counsel of DWSD. It is co-authored by  
12 Matthew Schenk, who was in house in the law department at the  
13 DWSD for a long time. As of the date of this document, he  
14 had left and is now -- was at this time and is now a lawyer  
15 at an outside law firm, and it's also co-signed by Mr.  
16 Kilpatrick, Richardo Kilpatrick, who is bankruptcy counsel to  
17 the DWSD. So those three lawyers are providing their  
18 comments to Ms. Lennox, and it's in the first --

19 THE COURT: You have no objection if I look at  
20 these, sir?

21 MR. SCHWINGER: It's not my document, so I have no  
22 objection to the Court seeing it, your Honor.

23 THE COURT: All right.

24 MR. SCHWINGER: I think the subject matter is --  
25 certainly has much in the way of nonlegal material even if

1       there is some legal issues interwoven.

2               THE COURT: Let me have a look at them then, please.

3               MR. IRWIN: May I approach?

4               THE COURT: Please.

5               MR. IRWIN: It's a draft.

6               THE COURT: Okay. Thank you. Stand by, please.

7 All right. The Court will sustain the city's assertion of  
8 privilege in regard to the three-page draft of the memorandum  
9 as well as the memorandum itself. Although there is much in  
10 the document that relates to business and operational  
11 information regarding the DWSD, it's clear that the document  
12 was prepared for Jones Day in Jones Day's work in  
13 representing the city in preparing the plan in the case, so  
14 the claim of privilege is sustained, and I'll return the  
15 documents to you.

16              MR. SCHWINGER: Your Honor, just one final question  
17 I would like to address to the Court was, as you mentioned,  
18 the document does contain some operational, et cetera, type  
19 material in there, and the question I raise with the Court is  
20 whether it would be appropriate to direct the city to produce  
21 a redacted version of the document that eliminates the legal  
22 discussion but leaves in the operational material, which,  
23 quite frankly, is what we care about, such as comments about  
24 bond ratings and so on.

25              THE COURT: Well, the attorney-client privilege is

1 broad enough to include factual information. It doesn't just  
2 cover the legal advice, so, no, I won't order that. All  
3 right. Any other issues? Let me ask you, sir, remind me who  
4 your client is.

5 MR. SCHWINGER: It's Assured Guaranty Municipal  
6 Corporation.

7 THE COURT: Okay. Is there a representative of the  
8 ad hoc committee here today this morning? No? Or the  
9 trustee for the water bonds?

10 MR. SCHWINGER: I don't believe so, your Honor.

11 THE COURT: Sorry?

12 MR. SCHWINGER: I don't believe so, your Honor.

13 THE COURT: No. I'm sorry. Would you repeat that,  
14 sir?

15 MR. DAVIDSON: This is Paul Davidson on behalf of  
16 U.S. Bank.

17 THE COURT: Okay. But there's no one here for the  
18 ad hoc committee or on the line? All right. I want to have  
19 a in-chambers conference with the two of you when we're done  
20 with this status conference, so, Mr. Davidson, we're going to  
21 have to get you back on the line to do that, so will you at  
22 the appropriate time provide us with your contact  
23 information?

24 MR. DAVIDSON: Yes, your Honor.

25 THE COURT: All right. Thank you. Would anyone

1 else like to raise any other issues regarding the status  
2 conference? All right. Here's what I have to discuss with  
3 you all. First, in regard to the legal arguments that are  
4 set for Wednesday, the question is the extent to which issues  
5 one and five, one relating to the ten-year injunction and  
6 five relating to an issue of classification or unfair  
7 discrimination in regard to the pension plans, will still be  
8 argued on behalf of the fire fighters given that the Police  
9 Officers Association has settled. Anybody have any sense of  
10 that question for us?

11 MS. PATEK: Your Honor, Barbara Patek, and with me  
12 is Earle Erman on behalf of the fire fighters and the DPOA.  
13 With respect to issues one and five, Mr. Legghio is handling  
14 those issues on behalf of the fire fighters and as of this  
15 time intends to proceed --

16 THE COURT: Okay.

17 MS. PATEK: -- on Wednesday.

18 THE COURT: Okay. Good. The next question is the  
19 question that Mr. Hackney raised, which is at what point is  
20 the city going to file an amended plan? Is it going to file  
21 an amended plan that covers the more recent settlements  
22 specifically with regard to the LTGO and now the DPOA, and,  
23 more generally, how does it plan to deal with this issue of  
24 continuing settlements, which we don't want to discourage,  
25 but we want to allow parties an opportunity to review before

1 they are called to deal with them in a hearing on the  
2 confirmation of the plan?

3 MS. LENNOX: So let me take those in turn, your  
4 Honor. For the record, Heather Lennox of Jones Day on behalf  
5 of the city. You asked me this question a couple weeks ago  
6 at the last hearing about when we're going to see an amended  
7 plan, and, frankly, I was hoping to have filed one last  
8 Friday because I was hoping that the final touches to both  
9 the UTGO and the LTGO settlements would be completed by that  
10 time. The parties are still negotiating. I think we are  
11 down to one issue that we just need to work on mechanics on  
12 for the UTGO. LTGO, of course, was settled more recently,  
13 and there are some aspects of that -- you know, it's one  
14 thing to reach a handshake deal in mediation, and we have  
15 told Mr. Hackney that there was no term sheet that was  
16 executed by the parties at the time. Given the timing of it,  
17 we wanted to move straight to, you know, regular  
18 documentation and not waste a week or two negotiating a term  
19 sheet. So those issues that come up when you're negotiating,  
20 definitive documents that come up, again, the parties I will  
21 assure your Honor -- and I don't know if anybody from Ambac  
22 is on the phone, but I would assure your Honor that the  
23 parties have a goal to finish that this week if at all  
24 humanly possible. We had considered filing a plan at the end  
25 of last week that didn't have the full settlement in it, but

1 we figured that would be kind of a waste of time, so that is  
2 our expected timing. I can't guarantee that the LT will be  
3 done. We are working and trying to move heaven and earth to  
4 get that done, but we intend to file a plan just as soon as  
5 that's wrapped up, and we hope that to be in the near term.

6 With respect to other issues that are still  
7 outstanding, while we have a variety of objections still  
8 pending to the plan, we have two large groups of creditors  
9 with whom we have not yet settled. We have the DWSD  
10 financial creditors, and we have the COPs groups.  
11 Fortunately, those two don't cross, so if we settled, for  
12 example, with the DWSD creditors, that is not going to affect  
13 Mr. Hackney's preparation for trial because he doesn't have a  
14 dog in the DWSD fight. If we -- similarly, if we settle with  
15 the COPs --

16 THE COURT: I'm not sure Mr. Hackney would agree  
17 with that.

18 MS. LENNOX: Well, I'd like him to articulate how he  
19 thinks he's got an interest in it then.

20 THE COURT: Okay.

21 MS. LENNOX: Similarly, if we settle with the COPs,  
22 that doesn't affect the DWSD because the DWSD financials are  
23 contained in an enterprise, and their financials are separate  
24 than the general fund financials. So I think that if we  
25 settle with either of those parties, even if it approaches



1 trial or maybe even, you know, goes a little bit past the  
2 beginning of the trial, the settling parties certainly aren't  
3 going to care because they will have settled with us, and it  
4 will not affect the other, so it shouldn't affect either's  
5 preparation for trial.

6 Again, we are in discussions with both of them,  
7 mediations actually, and, you know, I think the parties are  
8 working, and I know the mediators are working as hard as they  
9 can to move this along as quickly as we can.

10 THE COURT: I'm inclined to think it would assist  
11 your progress this week if I held another status conference  
12 next Monday to see where you are.

13 MS. LENNOX: With respect to the first, the UT, the  
14 LT?

15 THE COURT: With respect to filing an amended plan  
16 that makes the disclosures necessary for review of the --  
17 whatever settlements you have.

18 MS. LENNOX: That's fine, your Honor.

19 THE COURT: And you're negotiating with the fire  
20 fighters, too. Yes?

21 MS. LENNOX: Yes, we are, your Honor.

22 THE COURT: We do have a hearing on a motion for  
23 class certification of proofs of claims of Hyde Park and  
24 others at ten o'clock next Monday. Is there any objection to  
25 a renewed status conference at that time or --

1 MS. LENNOX: None from the city.

2 THE COURT: All right. Let's tentatively set that  
3 then. And if you file your plan by Friday, that would be  
4 fabulous.

5 MS. LENNOX: I agree, your Honor.

6 THE COURT: Is it still the city's plan to make the  
7 results of the voting public a week from today?

8 MS. LENNOX: Yes, your Honor.

9 THE COURT: Not sooner?

10 MS. LENNOX: Not sooner. The financial tabulation  
11 is a little complicated.

12 THE COURT: Right. Okay. I went back and reviewed  
13 my order appointing my expert witness to see what her process  
14 would be for disclosure of her report, and I think all it  
15 said was serve the report by the date.

16 MS. LENNOX: I believe that's true.

17 THE COURT: In the circumstances, since she is my  
18 expert, I have come to the conclusion, subject to your  
19 comments, that it would be a good idea for me to look at the  
20 report before it is served. Anyone object to that?

21 MS. LENNOX: We have no objection, your Honor.

22 THE COURT: Any objections? All right. So I'm  
23 going to enter an amended order and discuss that with  
24 Ms. Kopacz this afternoon.

25 MS. LENNOX: Thank you, your Honor.

1 THE COURT: Okay. Is there anything else anyone  
2 would like to bring up? Mr. Hackney.

3 MR. HACKNEY: Your Honor, if I could address that  
4 maybe, I guess, on the one hand, it's sort of intuitive that  
5 you're like, "I'd like to see my expert's report before she  
6 serves it to everybody," and so I understand that desire of  
7 yours. I don't have a necessarily visceral negative reaction  
8 to it except that I do know also that it's clear that the way  
9 you had set it up was that there wouldn't be ex parte  
10 communications between you and her, so --

11 THE COURT: Not on substantive matters.

12 MR. HACKNEY: Okay. Perhaps I didn't know if you  
13 wanted to give some thought -- maybe I didn't understand why  
14 you wanted to see her report, but in my context, I usually  
15 want to see expert reports so that I can give them feedback  
16 on the report that is substantive, so --

17 THE COURT: Well, I think it's appropriate to be  
18 sure that Ms. Kopacz answers the questions that I have asked  
19 her to answer.

20 MR. HACKNEY: Okay.

21 THE COURT: That's it.

22 MR. HACKNEY: Okay. So I guess --

23 THE COURT: I'm not going to be playing around in  
24 the weeds and asking her off the record why this and why that  
25 and why the other.

1 MR. HACKNEY: Maybe a way to tie it up would be in  
2 the subsequent deposition of Ms. Kopacz, do you feel that  
3 your comments -- communications with her --

4 THE COURT: Absolutely.

5 MR. HACKNEY: They would be subject --

6 THE COURT: Subject, yeah. I don't claim any  
7 attorney-client privilege.

8 MR. HACKNEY: I wasn't saying that you were. I just  
9 wanted to get it ironed out. So that's a good way to handle  
10 it.

11 THE COURT: Yes. I have asked her to keep a log --  
12 to include in her log of everyone's contacts with her her  
13 contacts with me, and it's all subject to your discovery.

14 MR. HACKNEY: That's perfectly fine. I just wanted  
15 to iron it out.

16 THE COURT: Okay. All right. I want to talk with  
17 Mr. Davidson and Mr. Schwinger regarding -- and counsel for  
18 the city regarding the legal arguments on the DWSD bonds,  
19 specifically issue number four, but I want to do that off the  
20 record in chambers, so let's convene with that in about five  
21 minutes. Chris, would you get Mr. Davidson's contact  
22 information so that we can call him when we are in chambers?  
23 All right.

24 Regarding the -- one second, sir. Regarding the  
25 status conference for the bus tour, I'm going to have to ask

1 you to be patient with me and do that after lunch. There's  
2 two reasons for that. First is I have a judges' meeting at  
3 noon, and, second, our IT people have asked for a break so  
4 that they can prepare the room for it to be closed, so we'll  
5 reconvene for that at 1:30.

6 MR. HAGE: Your Honor, one point. Excuse me. Paul  
7 Hage, National Public Finance Guarantee Corporation. We're  
8 also one of the financial creditors with respect to the DWSD  
9 bonds and wonder --

10 THE COURT: Oh, then you're welcome to attend as  
11 well.

12 MR. HAGE: Thank you.

13 MR. SCHWINGER: Your Honor, I just wanted to clarify  
14 on the legal issues. My partner, Mr. Sam Kohn, will be  
15 addressing that for Assured.

16 THE COURT: Okay. You can both attend or just one  
17 of you. However you work that out is fine with me.

18 MR. HACKNEY: One more point, your Honor. Did you  
19 want everyone here for the bus tour, or --

20 THE COURT: No. I just want the city's  
21 representatives and the two people who you have identified to  
22 negotiate the terms of the bus tour.

23 MR. HACKNEY: Thank you.

24 THE COURT: And then the room will be closed. Okay.  
25 So give me five minutes and then come back into chambers.

1           THE CLERK: All rise.

2           THE COURT: Oh, my staff reminds me to clarify with  
3 you that all of the notices of asserted rights to vote claims  
4 have been resolved. Are there any left? Any issues left on  
5 that? All right. I'm seeing a lot of negative response to  
6 that, so I will assume they are all resolved. Thank you.

7           (Proceedings concluded at 11:39 a.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

July 15, 2014

\_\_\_\_\_  
Lois Garrett